

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Andre Levesque

v.

Civil No. 09-cv-428-JL

Pfizer, Inc. Worldwide, et al.¹

O R D E R

Before the Court is Andre Levesque's complaint (doc. no. 1), alleging generally that defendants have violated his rights. Because Levesque is incarcerated and is proceeding pro se and in forma pauperis, the matter is before the court for screening to determine, among other things, whether Levesque has stated any claim upon which relief might be granted. See 28 U.S.C. §§ 1915(e)(2) & 1915A.

Standard of Review

The Court construes all of the factual assertions in pro se pleadings liberally, however inartfully pleaded. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976), to construe pro se pleadings

¹In addition to Pfizer, Inc. Worldwide, Levesque has named the University of Vermont, the State University of New York at Buffalo, and Chicago University as defendants to this action.

liberally in favor of the pro se party). "The policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts, the court may intuit the correct cause of action, even if it was imperfectly pled." Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997); see also Castro v. United States, 540 U.S. 375, 381 (2003) (courts may construe pro se pleadings to avoid inappropriately stringent rules and unnecessary dismissals). This review ensures that pro se pleadings are given fair and meaningful consideration.

To determine if a pro se complaint should be dismissed for failing to state a claim on which relief could be granted, the Court must consider whether the complaint, construed liberally, see Erickson, 551 U.S. at 94, "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, ___ U.S. ___, ___, 129 S. Ct. 1937, 1949 (2009) (citation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Inferences reasonably drawn from the plaintiff's factual allegations must be accepted as true, but the Court is not bound to credit legal conclusions, labels, or naked assertions, "devoid of 'further factual enhancement.'" Id. (citation omitted). Determining if a

complaint states a viable claim is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. at 1950 (citation omitted).

Background

The complaint in this matter lacks narrative coherence, but generally alleges that the defendants have subjected Levesque to their "maliciously cruel, deranged, demented idealism." Defendants have accomplished this by teaching students studying to become mental health professionals lies that lead to abuse of vulnerable people. In particular, Levesque points to a false premise, promulgated by the defendants, that social despair and cultural problems are, in fact, mental illnesses, and should be treated with pharmaceuticals, presumably manufactured by defendant Pfizer. Levesque characterizes such medication as "poison pills" that may alleviate symptoms but which also cause lifelong dependency on those pills. This collusive scheme serves to bilk consumers for profit by rendering them dependent on medications they do not need, to treat illnesses that do not exist.

Levesque further alleges that the medical staff at the Clinton County Correctional Facility in Plattsburgh, New York and the staff of the Vermont State Hospital failed to report abuse he

suffered at those facilities. Levesque complains that New Hampshire authorities have falsely labeled him "bipolar," while Vermont authorities improperly identified him as an antisocial, suicidal, alcoholic, substance abusing, and violent paranoid schizophrenic.

In a "Motion to Submit Evidence" (document no. 15), Levesque asserts that he was denied access to legal materials. As a result, he claims he was denied the opportunity to file an appeal in a case pending before this Court, Levesque v. N.H. Sup. Ct. Office of Attorney Discipline, No. 10-cv-040-SM.

Levesque files this action asserting entitlement to all of the assets of all four defendants. Levesque has also filed a number of motions in this case (docket nos. 3, 4, 7, 9, 11, & 13-15).

Discussion

I. Class Action Certification

Parties to a lawsuit cannot be represented by anyone other than themselves or a member of the bar. See 28 U.S.C. § 1654; see also Local Rules of the United States District Court for the District of New Hampshire ("LR") 83.2(d) & 83.6(b) ("Pro se parties must appear personally A pro se party may not authorize another person who is not a member of the bar of this

court to appear on his or her behalf."). Pro se litigants cannot fairly and adequately protect the interests of the class, as required by Fed. R. Civ. P. 23(a)(4). See Avery v. Powell, 695 F. Supp. 632, 643 (D.N.H. 1988) (denying pro se plaintiff's motion for class certification). Accordingly, Levesque's motion for class action certification (doc. no. 11) is denied.

II. Sufficiency of Complaint

While it is clear that Levesque is unhappy with the notions and ideas the defendant educational institutions are teaching to their students, his disagreement with their philosophy does not create a cause of action. Levesque's claim that he has been "subjected to" these notions is vague and conclusory, and not supported by the assertion of any specific facts which would indicate that any protectable legal interest of Levesque's has been violated by defendants.

In filing a civil rights complaint, a "claim must at least set forth minimal facts, not subjective characterizations, as to who did what to whom and why." Guglielmo v. Cunningham, 811 F. Supp. 31, 35 (D.N.H. 1993) (quoting Dewey v. Univ. of N.H., 694 F.2d 1, 3 (1st Cir. 1982)); accord Brown v. Zavaras, 63 F.3d 967, 972 (10th Cir. 1995) ("Even pro se litigants must do more than make mere conclusory statements regarding constitutional claims."

(internal citations omitted)). In this complaint, Levesque has failed to state any facts that, although generously construed, would enable him to clear even the low hurdle for pro se pleadings. I therefore order dismissal of the claim set forth in the complaint (document no. 1) as it fails to state any claim upon which relief might be granted.

III. Claim Alleging Denial of Access to the Courts

In a supplemental filing (document no. 15), Levesque asserts he was denied access to legal materials he needed to pursue an appeal in a case pending before this Court, Levesque v. N.H. Sup. Ct. Office of Attorney Discipline, No. 10-cv-40-SM. During incarceration, an inmate is entitled to legal resources which, in the aggregate, enable him to defend his criminal charges and to pursue civil rights actions complaining of the conditions of his confinement. See Bounds v. Smith, 430 U.S. 817, 832 (1977). To state a claim for denial of access to the court in a civil rights case due to the denial of access to legal materials, Levesque must allege that prison officials' actions "hindered his efforts to pursue a legal claim" that he is constitutionally entitled to pursue during his incarceration. Lewis v. Casey, 518 U.S. 343, 351 (1996).

Here, Levesque claims that his ability to pursue an appeal in Levesque v. N.H. Sup. Ct. Office of Attorney Discipline, No. 10-cv-040-SM, was impaired by the denial of access to legal resources. However, a review of the docket in that case indicates that no adverse actions have been taken against Levesque in that matter to date. There is, therefore, nothing to appeal at this time. It is possible that Levesque is referring to another matter he has pending in this Court, Levesque v. N.H. State Prison, Secure Psychiatric Unit, No. 09-cv-041-JD, in which he has recently filed a notice of appeal. In fact, Levesque successfully filed such a notice appealing the denial of preliminary injunctive relief in that case. Levesque's notice of appeal in that matter has been filed in this Court and forwarded to the First Circuit Court of Appeals for consideration. Levesque does not specify whether or how his ability to pursue his appeal to this part has been impaired, and none appears on the face of the record. Accordingly, Levesque has failed to state a claim for denial of access to the Courts. See Lewis, 518 U.S. at 351. Any future denial of access to the courts is, at this time, purely speculative and thus, is not ripe for review.

IV. Claims Asserted in Motions

To the extent that any of the motions Levesque has filed in this case attempt to add any claims to this action not addressed in this Order, the motions, and therefore those claims, have been raised in other cases filed by Levesque before this Court. See Levesque v. New Hampshire, et al., No. 09-cv-248-JD; Levesque v. New Hampshire, No. 09-cv-418-SM; Levesque v. Vermont, et al., No. 09-cv-419-PB; Levesque v. Marble Valley Wind Co., et al., No. 09-cv-427-PB; Levesque v. Shelburne Police Dep't, et al., No. 09-cv-429-PB; Levesque v. Town of Ellenburg, No. 09-cv-430-SM; Levesque v. Fletcher Allen Health Care, No. 09-cv-434-PB; Levesque v. Merrimack County Dep't of Corrs., No. 09-cv-435-SM, Levesque v. New Hampshire, et al., No. 09-cv-437-JL; Levesque v. Merrimack County Dep't of Corrs., et al., No. 09-cv-438-SM; Levesque v. Merrimack County Dep't of Corrs., No. 09-cv-453-JD, Levesque v. N.H. State Prison, Secure Psychiatric Unit, et al.; No. 10-cv-041-JD. There is, accordingly, no reason to address them again here, or construe the complaint in this matter to include any additional claims.

Conclusion

For the foregoing reasons, the motion for class certification (document no. 11) is denied. The complaint is

dismissed for failing to state any claim upon which relief might be granted. See 28 U.S.C. §§ 1915 & 1915A. All other motions pending in this action (document nos. 3, 4, 7, 9, 13 & 14) are denied as moot. The clerk shall enter judgment accordingly and close the case.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Date: May 28, 2010

cc: Andre R. Levesque, pro se